EDITOR'S NOTE:

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No. 89-1831

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1989

WALTER A. WALKER, JR.

Petitioner

v.

CONSUMERS POWER COMPANY

PETITION FOR A WRIT OF CERTIORARI TO THE U.S. COURT OF APPEALS SIXTH CIRCUIT AND REQUEST FOR SUMMARY REVERSAL

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May 1990

STATEMENT OF QUESTIONS PRESENTED

Whether Appeals Court's decision to affirm, without precedent, or legal logic, the district court's decision to dismiss case that was remanded for retrial, as well as their conduct during the proceedings is departure from the accepted and usual course of judicial proceedings and sanction of such a departure by a lower court to such an extent as to call for an exercise of the Supreme Court of the United States' power of supervision.

Whether the Appeals Court's four-year conduct in appellate matters of this case have been so egregious as to call for a review by this Court of all of the rulings and actions taken by the Appeals Court requiring reversal of all of their decisions.

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JURISDICTION

The order of the U.S. Court of Appeals Sixth Circuit, was entered on February 23, 1990. This petition for certiorari was filed less than 90 days from the date aforesaid. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS INVOLVED

NONE

STATEMENT

The Petitioner, Walter A. Walker, Jr., became employed with Respondent, Consumers Power Company on march 15, 1971. His initial title was Associate Engineer in the Nuclear Fuel Supply Department (NFSD). The primary mission of the NFSD is to

manage the multi-million dollar nuclear fuel cycle. Petitioner was subsequently upgraded to the titles of General Engineer and later, Senior Engineer.

Respondent refused to promote Petitioner seven times in five years to key positions that were open, and to which he alleged that he was clearly the most qualified by a wide margin. After the sixth incidence of Respondent's refusal to promote, Petitioner sought and received an audience with the man who was the President, Chairman, Chief Operating, and Chief Executive Officer (CEO) of the company. During that discussion, Petitioner left documents and a written condensed version of the allegations of wrongdoing that were subsequently presented in trial.

Per the CEO's orders a half hour later, Petitioner repeated the same presentation to the VP Personnel. After a one

month investigation, the VP Personnel submitted his report. In the CEO's office, Petitioner received a written rejection of his charges and the request to overturn the promotion decision. On March 19, 1980, he was fired by Respondent.

The five count complaint was filed on August 12, 1980. Petitioner charged Respondent with violation of the Civil Rights Act of 1866, U.S.C. 42 § 1981; Breach of Contract; Fraudulent Misrepresentation; Tortious Injury to Reputation; and Libel and Slander. In the amended complaint, Count 4 was changed to Impairment of Economic Opportunity. Petitioner subsequently dropped Count 5. Respondent submitted 12 motions for summary judgment and two motions for dismissal. As a result of a hearing on those matters, Count 4 of the complaint was dismissed.

After discharging his original set of three lawyers for inactivity on January 29, 1981, and their replacement attorney for inadequate preparation on February 5, 1982, Petitioner was unable to obtain counsel competent or willing to take his case. He was forced to prosecute his cause of action while acting as his own attorney.

Ultimately, the trial began on May 7, 1984, presided over by Judge Charles Joiner, who had previously been charged by Petitioner, in a 29 page request for his recusal, to be implacably biased and prejudiced against the Petitioner and for the Respondent. When the trial judge refused to disqualify himself, Petitioner sought a Writ of mandamus in the Sixth Circuit Court of Appeals. The Appeals Court refused to consider the writ.

After the defendant rested its case (and not before trial, as stated in the Appeals Court's July 27, 1987 and February 23, 1990 opinions), Count 3, Fraudulent Misrepresentation, was dismissed via directed verdict. On June 6, 1984, the seven member jury announced its verdict: NO on the charge of violation of U.S.C. 42 § 1981, and YES on the charge of Breach of Contract. The jury awarded Petitioner $1,194,600. The verdict was a unanimous decision. The trial judge upheld the jury's verdict in a Judgment Notwithstanding the Verdict (JNOV) hearing on August 7, 1984.

Respondent appealed on September 10, 1984. On July 27, 1987, after three years of appeals, including 1 1/3 years after the oral arguments, the Appeals Court made its decision in a 13 page opinion. It

decided to vacate the jury decision and remand the case back to the assertively biased and prejudiced judge. It further directed that the retrial be held minus counts 1 and 3, and that the issue of promotions be withheld from the jury.

In November 1987, a Petition for a Writ of Certiorari was submitted. It was denied on January 11, 1988. A Petition for Rehearing was denied on February 29, 1988. On July 13, 1988, Respondent moved the district court for dismissal of the state law breach of contract claim. The motion was granted on September 6, 1988, and the case was dismissed on October 6, 1988.

Petitioner appealed to the Sixth Circuit Court of Appeals on November 5, 1988. Petitioner requested oral argument. The request was refused. Again, the Appeals

Court deliberated for more than a year. On February 23, 1990, the Appeals Court upheld the decision of the district court in an eight page unpublished decision.

REASONS FOR GRANTING THE PETITION

CERTIORARI SHOULD BE GRANTED PER RULE 10(a)

Rule 10(a) of the Rules of the U.S. Supreme Court state that certiorari will be considered:

> When a federal court of appeals... has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.

APPEALS COURT CONCEALED BLATENT INJUSTICE BY RELEASING AN UNPUBLISHED OPINION

A decision lacking in precedential value will not be published. Sixth Circuit Court of Appeals local rule #24 states that:

> There shall be a presumption in favor of publication of signed and per curiam opinions. Such opinions shall be designated for publication unless a majority of the panel deciding the case determines otherwise upon consideration of the foregoing criteria. An order shall not be designated for publication unless a member of the panel so requests.

The February 23, 1990 decision was unpublished. The Appeals Court usually requires only two to four months to make a decision. The Appeals Court required more than a year to make this decision. It is crystal clear that a case that takes more than a year of cogitation to be decided has substantial precedential value, and therefore, should be published.

Respondent, the district court, and both Appeals Court panels all relied on United Mine Workers v Gibbs, 383 U.S. 715 (1966) as the key precedent. However, Gibbs did not turn on whether or not the

entertained jurisdiction of the state claim was proper. The Supreme Court reversed Gibbs on the issue of insufficiency of proof. The Court held that Respondent Gibbs failed to prove that:

> ...damages resulting from the picketing were prosimately caused by its violent component or by the fear which that violence engendered.
> Id. at 383 U.S. 1142.

Furthermore, both parties vigorously agreed that the district court did not retain the discretion to either retry or dismiss the pendent state claim. Respondent in its Appellee Brief stated that:

> The Sixth Circuit has interpreted Gibbs as leaving the district court little or no discretion to retain jurisdiction over a pendent state claim once the federal claim has been dismissed.
> Appellee Brief at 6.

The Appeals Court never held that the district court retained said discretion. The phrase "we again hold" is untrue.

Opinion at 1.

The parties disagreed on what the district court was required to do. Petitioner argued that the district court was required to conduct a retrial. Respondent argued that the district court was required to dismiss the state claim stating:

> In holding that dismissal of the plaintiff's pendent claim was required (their emphasis) once the federal claim was dismissed, the Sixth Circuit stated as follows ...
> Appellee Brief at 8-7.

The Appeals Court omitted Petitioner's argument that there existed no legal basis for the district court to dismiss the pendent state claim. The gist of that argu- was the even if the district court retained discretion, It would still have no choice but to deny Respondent's motion to dismiss.

Petitioner argued that Gibbs was a decision regarding an original trial and

not a retrial. Gibbs is not a jurisdiction of a case upon retrial precedent. Appellant Brief at 12. Respondent agreed. The Appeals Court agreed. It simply set forth something about a "fact pattern" being "analogous." They did not set forth any discussion of "fact pattern" legal logic, or how "fact patterns" manage to become substitutes for precedents.

Respondent in its brief cited Service, Hospital, Nursing Home and Public Employees Union, Local No. 47 v Commercial Property Services, Inc., 755 F.2d 499 (6th Cir. 1985), cert. den, 474 U.S. 850; Gibson v First Federal Savings & Loan Ass'n of Detroit, 504 F.2d 826 (6th Cir. 1974); and Kurz v State of michigan, 548 F.2d 172 (6th Cir. 1977), cert. den. 434 U.S. 972. Respondent agreed with Petitioner that all of the foregoing cases are not cases that

had been tried in federal court and remanded for retrial. The Appeals Court agreed. After a year of research, the Appeals Court did not come up with a single precedent regarding requirements nor discretion to dismiss pendent state law claims that have already been properly tried and won in the federal court and remanded for retrial.

Clearly, an appellate decision, that contains no applicable precedents, to uphold the dismissal of a remanded case, is a precedent setting decision. A precedent setting decision that resulted from a year of deliberation has enormous precedential value. To issue this decision as an unpublished opinion was an obscene departure from the accepted and ususal course of judicial proceedings.

ONCE AGAIN THE APPEALS COURT AUTHORED A FICTIOUS STATEMENT OF FACTS

This opinion, just like the July 27, 1987 opinion, is rife with lies, false innuendos, and outrageous omissions.

As mentioned earlier, the statement in the opinion:

> Today, we again hold that the district court retained the discretion to either retry or dismiss the pendent state claim. Opinion at 1.

is not true. The Appeals Court never made a decision regarding that issue before the February 23, 1990 decision. This lie was contained in the first paragraph. It was written after one year of cogitation, and a "thorough review of the record." Opinion at 7.

Paragraph two of the Opinion stated that Petitioner's first amended complaint contained as the fourth count "tortious

Injury to reputation." Actually, the fourth count was changed in the amended complaint to "Impairment of Economic Opportunities." This tort was authored by the attorney that replaced Petitioner's first set of lawyers. Neither the district court nor Petitioner was able to find a tort under that name. This was one of the items that prompted that attorney's discharge.

Paragraph three said that when the action came to trial, Petitioner attempted to prove "under Count II that 'Defendant had an express and implied duty, under the terms of the unwritten employment agreement entered into between [the parties] to deal fairly' with plaintiff." Opinion at 2. Petitioner's claim was well established through his Law Memorandum, his Appellee Brief to his oral argument,

was that he was promised titled, remuneration and formal responsibilities commensurate with his corporate and departmental contributions comparable to other high contributing employees. He was also promised that he would be discharged only for cause. Petitioner charged under Count III that defendant fraudulently misrepresented it self when it made the fore going assurances. Petitioner did not argue in trial that "defendant fraudulently misrepresented itself when it 'assured and promised job security and equal opportunity for advancement.'" Opinion at 2.

Paragraph four contains the statement that Count III was dismissed via directed verdict at the time of the trial. That was untrue. The directed verdict was granted after defendant rested its case. Perhaps, "at the time of the trial" is

a little bit less of a lie than the phrase, "prior to trial" that was used in the July 27, 1987 opinion. Walker v Consumers Power Company, 824 F.2d 499 (6th Cir. 1987), cert. den., ___ U.S.____, 108 S.Ct. 711, 98 L.Ed.2d 661 (1988). It was still a lie.

Paragraph six says that "The reversal was necessary because of errors in the jury instructions." This is not true. The case was reversed because the Appeals Court concluded that one jury instruction was improper. That is a single error and not errors.

PROPER JUDICIAL DISCRETION BY THE DISTRICT COURT WOULD NOT HAVE RESULTED IN DISMISSAL OF THE CASE

If the district court retained discretion, which Petitioner asserts that it did not, and if Gibbs was the applicable

law, which Petitioner asserts that it is not, then the district court, in exercising its judicial discretion was bound to follow the guidelines of Gibbs. It is clear in Gibbs that a state claim will not be dismissed if said dismissal is inconvenient and/or unfair to the plaintiff.

The Standard College Dictionary defines discretion as:

> Freedon or power to make one's own judgments and decisions and to act as one sees fit.

The term that is applicable to the federal courts is "judicial discretion." Blacks's Law Dictionary defines judicial discretion as:

> This term is applied to the discretionary action of a judge or court, and mean discretion as above defined, that is discretion bounded by the rules and principles of law, and not arbitrary, capricious, or unrestrained. It is not the indulgence of a judicial whim, but the exercise of judicial judgment, based on facts, and guided by law, or the

> equitable decision of what is just and proper under the circumstances.
>
> True, it is a matter of discretion; but then the discretion is not willful or arbitrary, but legal. And although its exercise be not purely a matter of law, yet it "involves a matter of law or legal inference," in the language of the Code, and an appeal will lie. [Citations Omitted].

The only reasoning that was set forth by the Appeals Court to support the decision of the district court to dismiss was:

> Because the only remaining issue in the case was a pendent state law claim, the district court granted defendant's motion on September 6, 1988.
> Opinion at 3.

That reasoning is arbitrary and capricious. That is indulgence of a judicial whim. That is willful. That is not judicial judgment based on facts and guided by the law.

If the district court exercised judicial judgments based on facts and guided

by the law, he would have to follow the criteria set forth by Gibbs:

> It has consistently been recognized that pendent jurisdiction is a doctrine of discretion, not of plaintiff's right. Its justification lies in considerations of judicial economy, convenience and fairness to litigants; if these are not present a federal court should hesitate to exercise jurisdiction over state claims, even though bound to apply state law to them. United Mine Workers v Gibbs, 383 U.S. 715 (1966).

The Appeals Court did not hold that inconvenience and unfairness must be the rules and principles of law that discretion must be bounded by. Rather, it was asserted that those considerations were merely points of argument by Petitioner.

The Appeals Court agreed that having to start the case all over again from the beginning is inconvenient. However, they assert that such inconvenience is descriptive of "personal inconvenience," and not

the sort of "inconvenience" that is contemplated by "the rules." Black's Law Dictionary defines inconvenience as follows:

> In the rule that statutes should be so construed as to avoid "inconvenience," this means... as applied to individuals, serious hardship of injustice. [citations omitted].

The is not one word in Gibbs that can lead anyone to a different definition.

Incredibly, the Appeals Court insisted that the relationship between the geographic location of the forum and the accessibility of witness, proof, location of events, and choice of law questions was the "inconvenience" contemplated by the "rules." Opinion at 6. Indeed the doctrine does exist and is applicable to certain cases. It is not remotely applicable to this case, however, and the Appeals

Court did not even attempt to set forth some sort of argument in support. Inconvenience in Gibbs has the same meaning as the word "inconvenience" in any other legal opinion unless otherwise stated. Serious hardship and injustice is descriptive of personal inconvenience, and by the Appeals Court own admissions, even if the district court retained discretion to dismiss, exercise of proper judicial discretion would have required the district court to deny the motion to dismiss.

With regard to the matter of unfairness to the plaintiff, Petitioner set forth his key argument which was not discussed in the opinion:

> At the hazard of being repetitious, this argument concerns a retrial. Appellant won the original trial. It is self evident that Appellant would desire to conduct his retrial in the federal forum where his original jury trial victory occurred.

DECISION VIOLATES THE BASIC PRINCIPLES OF TRIAL LAW

Back to the basics. The objective of the rules of procedure and evidence is to attempt to provide a fair forum for all litigents to advocate their position regarding a dispute, and to get a fair decision from a jury of their peers. Without his objective the whole concept of trial and appellate system becomes a fraud. It becomes only a more sophisticated version of the kangaroo courts of despotic and totalitarian societies.

The losing party may upon appeal, get the opportunity to do the trial again because something that occurred or should have occurred in the trial prevented the losing party from having a fair trial. As clearly articulated by Justice Kennedy in the case cited by Respondent:

> The principle error assigned is that a tape recording introduced by the plaintiff below and played for the jury contained prejudicial statements which seriously impaired defendant's right to a fair and impartial trial. White v Cohen, 635 F.2d 761 (9th Cir. 1981), at 761.
>
> Since the case was a close one, the prejudicial remarks might well have been the critical factor in swaying the jurors to side with the plaintiff. As a result, we hold that the prejudicial statements in the tape, and with the fact that plaintiff's counsel offered the tape knowing of such contents, have so tainted this case that a new trial is necessary. White, Supra at 763.

Once the offending item that tainted the case is found, and a new trial is required, the logical step is to reproduce the original trial minus the offending item. If everything else in the trial was okay, or at least harmless, and the original trial is reproduced minus the tainting item, the result should logically be a fair and impartial trial.

In this case, where the only alleged offending item was a single jury instruction, the next step required by logic have to be to reproduce the original trial in the federal court, with the same witnesses, under the same three original charges,and with similar jury instructions minus the improper jury instructions.

Petitioner prays that the Court does not underestimate the enormity of the Appeals Court's malice. This is a case that has been in the federal courts for 9½ years. During that period of time, a black pro se plaintiff won a unimous $1.2 million jury verdict from a seven member all white jury. That verdict was upheld by the presiding judge in a JNOV hearing.

The case of Walker v Consumers Power Co. no longer exists. Petitioner must start all over again where he began with

the filing of the complaint in August 12, 1980. This is mandated by an unpublished opinion that required one year of deliberation without oral argument and without the support of precedence and legal logic. All of this exists solely because a single jury instruction troubled the Appeals Court.

This is a level of departure from the accepted and usual course of judicial proceedings that is an insult to this Court and the constitution.

THE OPINION IS CLEAR AND CONVINCING EVIDENCE OF RECIAL ANIMUS BY THE DISTRICT AND THE APPEALS COURT

The Appeals Court considered Petitioner's charges of racial animus by the district court and the Appeals Court. It concluded that:

> Appellant has not included any evidence or citations to the record to support his allegations.

> After a thorough review of the record we are unable to detect any signs of racial animus or indications that Appellant's case was in any way prejudiced. Opinion at 7.

Petitioner in his Appellant Brief set forth the fact that the district court judge refused to have the final pretrial conference in his chambers, then at the last minute, refused to attend the final conference. Petitioner stated that:

> He (district court judge) was so consumed by racial animus toward the black appellant that he was unable to be in the same room with him, notwithstanding the fact that he had designated a neutral area of comfort to him, outside of his chambers. Instead he sent his inexperienced law clerk to conduct the final pretrial conference in his behalf.
>
> This form of out-of-control behavior by a federal district court judge is outrageous, beyond explanation or excuse, and is an insult to the bar, the federal judiciary and the constitution. Appellant Brief at 7-8.

The Appeals Court's documented

refusal to consider the clear and convincing evidence of racial animus by the district court judge is itself clear and convincing evidence of racial animus by the Appeals Court. That evidence in reinforced by the history of the Appeals Court's actions and rulings.

THE APPEALS COURT'S HISTORY IN THIS CASE SHOWS THAT IT HAS CORRUPTED ITSELF, REQUIRING EXERCISE OF THIS COURT'S POWERS OF SUPERVISION

As stated by Rule 10(a) of the Rules of the Supreme Court, This Court's responsibilities go well beyond the task of selecting the most entertaining cases to present as national law drama. It has the ultimate responsibility for making the concept of "equal justice under the law" a reality, and maintaining that state of the law.

Thus the Court has not discharged all of its responsibilities when it arbitrates complex issues of law. It must vigorously exercise its powers of supervision, at a very minimum, on occasions when a U.S. Court of Appeals corrupts itself. Petitioner submits that the history of the Sixth Circuit Court of Appeals' conduct in this case is conclusive evidence of a nearly unspeakable level of corruption.

As stated earlier, this case with its landmark $1.2 million in compensatory damages jury verdict no longer exists because the Appeals Court concluded that a single jury instruction seemed improper. With regard to that jury instruction, it is well settled that White v Cohen, 635 F.2d 761 (9th Cir. 1981) and Juneau Square Corp. v First Wisconsin

National Bank of Milwaukee, 624 F.2d 798 (7th Cir. 1980), cert. den. 449 U.S. 1013, 66 L.Ed.2d 472, 101 Sup. Ct. 571 (1980). are controling precedents regarding grounds for a new trial. These rulings require each of the following to be true to vacate a jury decision:

A. There must be an error.

B. The error must be prejudicial to the losing party.

C. The prejudicial error must have critical impact on the jury's decision making. It must be not harmless error.

In this case, the following is true:

A. The jury instruction on the oral contract to promote was in error. Both parties agree to that.

B. Opinion of July 27, 1987 does not indicate error was prejudicial.

The word prejudicial or an appropriate substitute was never used in the opinion.

C. Error was actually prejudicial to the prevailing party.

D. Appeals Court said that it was unable to determine the affect of the error upon the jury's verdict. This IS, by definition, harmless error.

E. Impossible for error to outweigh 24 reversible errors that were harmful to the substantial rights of the prevailing party.

Juneau and White set forth black letter law. This is a blatant violation of black letter law.

Furthermore, the decision was based on a blatant lie. At the foundation of the aforementioned rules, lie the require-

ment that the evidence in dispute must, at least, exist. The claim referred to by the Appeals Court's decision does not exist.

The claim stated in the jury instruction that was the basis for the Appeals Court's decision to vacate the jury verdict was not Petitioner's claim. It was MADE UP by the trial judge. Petitioner submitted a different claim. This is substantiated by the record, the oral argument tapes, and the fact that the Respondent never made any rebuttal attempt.

The July 27, 1987 opinion is rife with lies, false innuendos, and outrageous omissions, that are clearly shown by the record. Respondent never attempted to rebut the foregoing charges. If Respondent fails to rebut charges, the charges must be deemed to be true.

A federal court of appeals is universally regarded with considerably more trust that members of the News Media. False statements by the Appeals Court are, therefore, considerably more damaging since the Appeals Court enjoys the highest level of credibility of any body in the United States, save the Supreme Court.

A story in the news media is a one time event. Its effect diminished with time. Libel in the F.2d series is continuing libel. It is reference material and may be used by any number of people at any time. It will exist in that position for so long as the present system of jurisprudence exists. Every time this decision is read, Petitioner is libeled. Such form of continuing libel is far more egregious than the standard form. The damage is immeasurable.

Respondent is a Fortune 500 corporation with an enormous in-house legal staff and unlimited financial, influential and technical resources. The opposing counsel were the senior partner, plus one of the top litigators, of one of the most prestigious law firms in the state of Michigan, plus an experienced member of defendant's in-house legal staff. The trial was presided over by a former law school dean, with 12 years on the federal bench, author of several books on trial procedures, and the additional distinction of having served as a member of the nine person Committee On Rules Of Practice and Procedure.

The trial judge exhibited such enormous bias and prejudice against the Petitioner during pretrial that Petitioner submitted a 29 page request for his

recusal, petitioned for a writ of mandamus when he refused and submitted an Addendum to the Request of Recusal shortly before the commencement of trial. Petitioner, in his Appellee Brief, listed 24 errors that were harmful to his substantial rights.

Petitioner was, at the time of the trial, a 45 year old black man, who had acted as his own attorney since 2 1/2 years before the trial and during the trial. He was an engineer by training, and he was untrained in law. His only exposure to legal education having been a military law class when he was an officer in the U.S. Army in 1966. He was without moral, legal, research, stenographic, clerical, paralegal, or technical assistance. He was alleged, by Respondent, to be so mediocre that he received no sub-

stantial promotions in nine years of employment, was passed over by 15 people, and was refused promotions to key positions, that were open, seven times in five years, because Respondent alleged that he lacked initiative, interpersonal skills, and communication skills.

Petitioner boldly asserted, for three years before trial and during trial, that by virtue of his actual responsibilities, experience and demonstrated competence, he was a uniquely qualified corporate executive, although he did not hold the titles, pay and formal responsibilities commensurate with that level of position. This black man who was asserted by the Respondent to be consistently deficient in the virtues and skills necessary for promotion to key management positions, claimed that said titles, pay and formal

responsibilites were knowingly, consistently and maliciously withheld from him for the purpose of destroying an executive career that was already earned by nine years of demonstrated competence. This man that Respondent asserted to be lacking communication skills, interpersonal skills, and initiative, claimed that his work impacted the corporate financial position directly and in a positive manner. The denial of his promotions to 7 key positions in 5 years that were open, and to which he was clearly the most qualified by a wide margin, impacted the corporate financial position in a direct and negative manner.

He furthermore claimed that the man who was President, Chairman, CEO of the company, and one of the three exucutive vice presidents were the persons directly

Involved and responsibile for the acts of wrongdoing. Petitioner charged that Respondent had a corporate policy of executive jim crow and requested compensatory damages of $5 million plus punitive damages of $15 million on the charge of ciolation of the Civil Rights Act of 1866, § 1981.

Petitioner utilized 136 items of evidentiary documents. Respondent utilized only 2. Petitioner utilized 8 demonstrative exhibits. Respondent utilized none. Petitioner put 7 Consumers Power executives on the stand as adverse witnesses. Respondent only took the deposition of one witness that was read in court. Petitioner was restricted to a one hour summation. The one month in duration trial had an extraordinary two week recess in the middle. The trial

judge allowed Counsel for Respondent's own privately financed court reporters to substitute for the official court reporter during Petitioner's testimony, and to receive daily transcripts from them without copies being made available to Petitioner.

The Appeals Court, inexplicably chose to make a "careful" reading of the entire 3141 page record and a "thorough" reading of the 1706 page transcript, and to ignore the briefs and joint appendices. After cogitating for a year and four months after the oral arguments, the Appeals Court concluded that the landmark $1.2 million unanimous verdict that was rendered by a seven person all white jury and upheld by the assertively biased and prejudiced judge, had to be vacated and remanded to the same district court

judge with severe restrictions upon re-trial because Petitioner prevailed despite PRESENTING INSUFFICIENT EVIDENCE to support an oral contract claim for promotions.

THAT IS IMPOSSIBLE! There are four factors that could enable a plaintiff to convince a jury to award substantioal compensatory damages despite the plaintiff's lack of sufficient evidence. They are as follows:

1. The jury is extremely sympathetic to the plaintiff.

2. The judge is extremely biased and prejudiced against the defendant and manipulates the trial toward a victory for the plaintiff.

3. The counsel for the defendant is extremely incompetent.

4. The counsel for the plaintiff

possesses outstanding trial skills.

It is well known among lawyers, judges and laymen alike that all-white juries are not inclined to be sympathetic to black plaintiff. The chances of winning a $1.2 million compensatory damage award with an all-white jury while presenting insufficient evidence is very slim. The presence of a presiding judge who was a former law school dean makes such a victory even more remote. Clearly, a judge of that background would not be inclined to place three competent university trained members of the bar at a disadvantage in a trial in which they are opposed by an untrained-in-law pro se plaintiff. Furthermore, Petitioner had vigorously charged the judge with implacable bias and prejudice against him and for the Defendant. It is well known that

judges are usually affronted by such action.

The competence of the counsel for the defendant was established earlier. Petitioner has encounted vigorous resistance against the concept that he is a crack trial lawyer. Thus for the sake of this discussion, it must be presumed that he brought only the most minimum of trial skills to the task of convincing the jury of his charges, since Petitioner has not found any lawyer or judge willing to consider otherwise.

If a black janitor entered a federal district court before an all white jury and claimed with INSUFFICIENT EVIDENCE that he had actually acted as Chief Executive Officer of the company for a few years, he would be laughed out of court. There are no black chief executive

officers of any major corporations in this nation. There are very, very few, if any, black executive vice presidents of any major corporations of this nation. The media has never even faked a top results-producing black corporate executive of a corporation. Clearly, a black plaintiff, whose highest title held had been senior engineer, claiming that he was more qualified to be executive vice president than the man who was currently holding the position, places himself under the hazard of a serious credibility problem. A failure to present sufficient evidence to support any one of his claims would have disastrous consequences to his credibility with the jury.

A jury is inherently prejudiced against a pro se plaintiff. It is instantly assumed that his case is too weak

to deserve representation by competent counsel. Furthermore, it is well established that demands for extremely large damages are met with skepticism by most juries. The world is quite familiar with the concept of contingent fee. The instant reaction to a pro se plaintiff demanding damages of $20 million is that there is absolutely no merit to his case, for if there was, then surely a competent attorney would leap to take his case, eagerly anticipating a large contingent fee.

Furthermore, a two week recess in the middle of a one month trial would present an enormous obstacle to a plaintiff, with the burden of proof and insufficient evidence. To be saddled with the restriction of a one hour summation would simply finish him. The advantage afforded

the defendant by being allowed to have daily transcripts to review, without granting the same opportunity to the plaintiff, is obvious and needs no discussion here.

There exists no lawyers of minimum trial skills who have ever prevailed over such obstacles without sufficient evidence. There does not exist a lawyer who would testify that he would be expected to lose a record setting $1.2 million in compensatory damages award to a black pro se lawyer before an all-white jury under the circustances of this trial and with the pro se lawyer presenting insufficient evidence to prove one of the claims that he won. To even suggest such a possibility is an insult to anyone's intelligence, the constitution and this nation.

The asininity of the combined July

27, 1987 and the February 23, 1990 decisions is far beyond measure. Surely, such a body did not suffer some sort of sudden and inexplicable loss of intellect. The conclusion must be that they corrupted themselves and rendered themselves totally unable to act or think rationally about this case.—

PETITIONER'S PRO SE STATUS IS NOT GROUND FOR THE SUSPENSION OF HIS CONSTITUTIONAL RIGHTS

It has been angrily suggested by various lawyers that Petitioner's capricious and grossly unjust treatment at the hands of the Sixth Circuit Court of Appeals was justified by the fact that he won a landmark case pro se with nil formal training in law. It is well settled that a litigant has the right to represent himself in court. That right is confirmed

by 28 U.S.C.A. § 1654.

That right is illusory if a tacit agreement exists within the federal judiciary that said pro se litigant must lose. It is a mockery of justice if the federal judiciary demonstrates its willingness to "bend the rules" for a clearly incompetent pro se litigant with an obviously weak case, while demonstrating outright hostility to a competent pro se litigant with a strong case.

The fact is that for hundreds of years, every law school, law publication, law association, and the courts have consistently maintained the principle that living under the rule of law requires disciplined adherence to logic, precedence and established procedures. Furthermore, that there must be NO DEVIATION from this principle, even if the expected results

promises to be extremely uncomfortable to the lawyers, judges, and society.

It is by that principle that people clearly guilty of outrageous crimes are occassionally sent back to the streets of this nation because of a "legal technicality." It is by that principle that exremely profane comedians such as Lenny Bruce are allowed to address this Court. Finally, it is by that principle, that this Court overturned the decisions of the district court and the appeals court to rule in favor of an incredibly obscene pornographer who had openly profaned this Court during oral arguments on his case, which involved libel against an established minister.

Now comes various attorneys who say that the feelings of hostility aroused by the specter of a black man in America,

untrained in law and acting as his own attorney, after being turned down by a Who's Who of distinguished lawyers, leaders, and rights activists, emerging victorious from a trial court battle with a Fortune 500 corporation and a prestigious law firm, are so much greater than the feelings of hostility that are aroused by a child molester, ax murderer, child abuser, dope dealer, pornographer, and profaner of this Court, that the federal courts are compelled to suspend that black man's constitutional rights, and without any reasonable logic, arbitrarily throw out his hard earned victory that was previously believed impossible. That not satisfied with that outrage, if felt compelled to throw his whole case out of the federal courts.

That such a concept could seem

reasonable and logical to learned judges of any court of this nation presents immediate dangers to this democracy that are too terrifying to contemplate. At a minimum, the Third Reich will seem tame in comparison to a near future America driven by such a concept.

CONCLUSION

The petition for a writ of certiorari whould be granted. Summary reversal shold be granted.

Respectfully submitted,

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May 1990

APPENDIX A

The opinion rendered by the United Staes Court of Appeals, Sixth Circuit.

FILED

Feb 23, 1990

LEONARD GREEN, Clerk

No. 88-2024

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

WALTER A. WALKER	)	
	)	
Plaintiff-Appellant,	)	ON APPEAL FROM
	)	THE UNITED
v,	)	STATES DISTRICT
	)	COURT FOR THE
CONSUMERS POWER CO.,	)	EASTERN
	)	DISTRICT OF
Defendant-Appellee,	)	MICHIGAN

Decided and Filed _____

BEFORE: NELSON and BOGGS, Circuit Judges, and WILHOIT, District Judge.*

PER CURIAM. - Walter Walker, the plaintiff below, appeals pro se from the

dismissal without prejudice of his pendent state law claim after it alone was remanded for a new trial. Appellant argues that the district court was required to conduct a retrial and had no discretion to dismiss the claim for lack of jurisdiction. Today, we again hold that the district court retained the discretion to either retry or dismiss the pendent state claim.

I

Mr. Walker was employed by defedant-appellee as a senior engineer in the Nuclear Fuel Supply Department. On March 19, 1980 he was fired from his job and his first amended complaint, filed on July 22,

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*The Honorable Henry R. Wilhoit, Jr., United States District judge for the Eastern District of Kentucky, sitting by designation.

1981, contained five counts:(1) violation of 42 U.S.C. §1981; (2) breach of contract; (3) fraudulent misrepresentation; (4) tortious injury to reputation; and, (5) libel and slander.

The action came to trial on May 7, 1984 on only the first three counts of the first amended complaint. Mr. Walker attempted to prove under Count I that he was subjected to "an ongoing course of unlawful discrimination by the Defendant solely on account of Plaintiff's race;" under Count II that "Defendant had an express and implied duty, under the terms of the unwritten employment agreement entered into between [the parties] to deal fairly" with plaintiff; and under Count III that defendant fraudulently misrepresented itself when it "assured and promised Plaintiff job security and equal

opportunity for advancement."

Of the three counts, the first was based on federal law while the second and third were based on state law. The district court exercised its descretion and retained jurisdiction over the pendent state claims. At the time of trial, defendant's motion for directed verdict on the fraudulent misrepresentation claim was granted. Thus, only the §1981 claim and the breach of contract claim were submitted to the jury.

On June 6, 1984 the jury returned its verdict in favor of defendant on the §1984 claim and in favor of plaintiff on the breach of contract claim and awarded him the sum of $1,194,600 in damages.

Defendant appealed the judgment on the breach of contract claim to this Court. Plaintiff did not cross-appeal the

district court's dismissal of his fraudulent misrepresentation claim or the jury's finding of no liability on the §1981 claim. In Walker v. Consumers Power Co., 824 F.2d 499 (6th Cir. 1987), cert. den., ____ U.S. ____; 108 S. Ct. 711, 98 L.Ed. 2d 661 (1988), we reversed the breach of contract judgment and remanded for a new trial limited to that issue. The reversal was necessary because of errors in the jury instructions. Id.

On remand, the issue of the court's continuing jurisdiction was raised. On July 13, 1988, defendant moved the court to dismiss plaintiff's state law breach of contract claim. Because the only remaining issue in the case was a pendent state law claim, the district court granted defendant's motion on September 6, 1988. In order to protect plaintiff and allow him

to avail himself of a state forum, the district court: 1) dismissed the claim without prejudice; 2) ordered defendant to file a waiver of all applicable statute of limitations defenses: and 3) did not enter the dismissal order until October 6, 1988 so that plaintiff would have adequate time to file his claim in the appropriate state court. Plaintiff now appeals the September 6, and October 6, 1988 orders of the district court.

II

Appellant argues that the district court erred in the following ways: 1) the order remanding the breach of contract claim mandated the district court to retry the issue and left the court without discretion or authority to dismiss it; 2) that a retrial in state court would be inconvenient and unfair to appellant;

and 3) appellant's §1981 claim should have been remanded for retrial along with the breach of contract claim.

A

The opinion in which the breach of contract claim was remanded for retrial included the following footnote:

> While the claims remaining to be retried are pendent, we do not believe under United Mine Workers V. Gibbs, 383 U.S. 715, 86 S.Ct. 1130, 16 L.Ed.2d 218 (1966), that the district court is obligated to dismiss since it is evident that a good-faith case under §1981 was presented for the jury's consideration and thus was adequate to confer federal question subject matter jurisdiction. The Court's continuing jurisdiction under these circumstances to retry the pendent claim cannot, we believe, be seriously challenged.

824 F.2d at 501 n.1.

We do not agree with appellant that the above quoted footnote required the district court to conduct the retrial. Rather, it acknowledges that the district

court retained the necessary jurisdiction to retry the case and would not be required to dismiss it. It says nothing about the district court's discretionary power to decline jurisdiction. The fact that the district court is not required to dismiss the case does not mean that it is bound to retry the case.

In United Mine Workers, supra, the United States Supreme Court stated:

> It has consistently been recognized that pendent jurisdiction is a doctrine of discretion and not of plaintiff's right. ... Needless decisions of state law should be avoided both as a matter of comity, and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law. Certainly, If the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well.

Id. at 383 U.S. 726-727.

The fact pattern before use is analogous to the situation referred to in the

above quote where the federal claims are dismissed before trial. Appellant's breach of contract claim was originally supported jusidictionally by the federal §1981 claim but not stands alone and is no longer pendent.

Whether or not to dismiss a pendent state claim after all federal claims have been disposed of is a question generally left to the discretion of the district court. Kitchen v Chippewa Valley Schools, 825 F.2d 1004 (6th Cir. 1985); Roberts v. City of Troy, 773 F.2d 720 (6th Cir. 1985). Moreover, this circuit has consistently expressed a strong policy in favor of dismissing such state law claims. See, Service, Hospital, Nursing Home and Public Employees Union, Local No. 47 v. Commer-Property Services, Inc., 755 F.2d 499 (6th Cir. 1977), cert. den. 474 U.S. 850

(1985); Kurz v. State of Michigan, 548 F.2d 172 (6th Cir. 1977), cert. den. 434 U.S. 972 (1977); Gibson v. First Federal Savings & Loan Ass'n of Detroit, 504 F.2d 826 (6th Cir. 1974).

Although the district court may have had jurisdiction to try the remanded issue, clearly it had the discretion to dismiss the pendent state law claim.

B

Appellant next argues that a retrial of the breach of contract claim in the state court would be inconvenient and unfair. This court is not unmindful that submitting a new complaint, paying a new docket fee, awaiting appellee/defendant's new answer, petitioning the state court accept the evidence and record generated in the first case, the possibility of discovery being reopened, operating under

state rules of procedure rather than federal rules, and arguing that the claim is not time-barred will all be inconvenient.

The doctrine of forum non conveniens refers generally to the relationship between the geographic location of the forum and the accessibility of willing and unwilling witnesses, the residence of the parties, the location of sources of proof, the location of the events that gave rise to the dispute, and choice of law questions. See, Gulf Oil Corp. v Gilbert, 330 U.S. 501 (1947); Scherten-Lieb v. Traum, 589 F.2d 1156 (2d Cir. 1978); Vencedor Manufacturing Co. Inc. v. Gougler Industries, Inc., 557 F.2d 886 (1st Cir. 1977).

In the present case, appellant speaks only of his personal inconvenience in

having to file and pursue his claim in a new forum. This does not give rise to "inconvenience" as contemplated by the rules. Appellant does not allege that retrial in state court will in any way affect his ability to call the necessary witnesses or obtain the proof he needs in order to present his case. The events that give rise to the dispute occurred in the state of Michigan, both parties are residents of Michigan, and Michigan law will be applied to the facts. None of the factors cited above support appellant's claim of "inconvenience."

Appellant's argument that trying the claim in state court would be unfair can be divided into three parts -- none of which are persuasive. He first discusses the unfairness of having to retry the breach of contract claim no matter where

the retrial is held. Our decision to remand the breach of contract issue was made in the first appeal, Walker, 824 F.2d 499, and is not subject to review in this proceeding. Hildreth V. Union News Co. 315 F.2d 548 (6th Cir. 1963), cert. den. 375 U.S. 826 (1963).

Appellant's second "unfairness" argument is based on his perception of racial prejudice. In his brief, he makes broad allegations that he wil face "extreme" racial prejudice in the state court system and that "[a]ll experienced litigators are aware of the unfairness of throwing a black plaintiff to the bear pit of the state forum." Appellant's brief at p.11. He also alleges that the federal district court and this court exhibit the same racial animus.

Appellant has not included any

evidence or citations to the record to support his allegations. After a thorough review of the record we are unable to detect any signs of racial animus or indications that appellant's case was in any way prejudiced. Likewise, we are aware of no evidence that appellant will be subjected to racial discrimination should his claim be retried in the courts of the State of Michigan. What we see before us is a very able pro se litigant who has wrongly attributed his legal setbacks to his race.

For his third "unfairness" argument, appellant contends that the district court acted unfairly in remanding his claim to the state court knowing that it might be time barred. In its order granting defendant's motion to dismiss, the district court ordered defendant to file

a waiver of such defenses. Contrary to appellant's allegations, we see no unfairness. Whether the time has run or not, the claim can proceed to trial in the state forum without regard to the applicable statute of limitations.

C

Finally, appellant argues it was error for this court to limit the remand and retrial to the breach of contract claim. He contends that the retrial should also include the §1981 claim. our ruling in the first appeal is the law of the case and will not be reconsidered on this second appeal. Hildreth at 550.

Accordingly, the judgment of the district court is affirmed.